

## Article 4: City Employees' Retirement System

### Division 12: Post Retirement Health Benefits

*("Health Insurance" added 5-26-1992 by O-17770 N.S.)  
(Retitled to "Retiree Health Benefit" on 2-25-1997 by O-18383 N.S.)  
(Retitled to "Post Retirement Health Benefits"  
on 3-3-1997 by O-18392 N.S.)*

#### §24.1201 Eligible Retirees

- (a) Effective August 1, 1997, two separate post retirement health benefits shall be offered, one to Health Eligible Retirees and one to Non Health Eligible Retirees as set forth in this Division. A Health Eligible Retiree is any General Member, Safety Member or Elected Officer who: (1) was on the active payroll of the City of San Diego on or after October 5, 1980, and (2)retires on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System. A Non Health Eligible Retiree is any retiree who: (1) retired or terminated employment as a vested member from the City of San Diego prior to October 6, 1980; and (2) is eligible for and is receiving a retirement allowance from the Retirement System.
- (b) Health Eligible Retirees who retired on or after July 1, 1992 under the "sliding scale" benefit in existence at the time of their retirement shall have their Retiree Health Benefit prospectively adjusted on August 1, 1997, to be the same as that for Health Eligible Retirees who retire on or after August 1, 1997.
- (c) Effective December 31, 1998, a third post retirement health benefit shall be offered to the spouses and dependents (under the age of 21) of a City employee Member killed in the line of duty by external violence or physical force, or as a result of an accident or injury caused by external violence or physical force and suffered in the line of duty. For Safety Members, this benefit shall be paid if death benefits are payable under a final decision made pursuant to the federal Public Safety Officers Benefit Act to a spouse or dependents (under the age of 21). The surviving spouse and dependents (under the age of 21), shall be entitled to receive post retirement health benefits, in an amount equivalent to the annual Flexible Benefits Allotment as defined in the Annual Salary Ordinance adopted by the City Council, as Health Eligible Retirees as set forth in Division 12, Post Retirement Health Benefits. No benefits shall be provided under this section if : (1) the death or injury resulting in death was caused by the intentional misconduct of the

employee or by the employee's intention to bring about his or her death or injury; (2) the employee was voluntarily intoxicated at the time of his or her death; (3) the employee was performing his or her duties in a grossly negligent manner at the time of death or injury; or (4) to any individual who would otherwise be entitled to a benefit under this section if such individuals actions were a substantial contributing factor to the death or catastrophic injury of the employee.

*(Amended 1-8-2002 by O-19022 N.S.)*

#### **§24.1202 Post Retirement Health Benefits Defined**

- (a) Beginning in fiscal year 2002, each Non Health Eligible Retiree will be paid or reimbursed up to \$1,200 per year for health insurance expenses.
- (b) Health Eligible Retirees are entitled to participate in and obtain health coverage under any currently available City-sponsored health insurance plan or any other health insurance plan of their choice. The Health Eligible Retirees will be paid or reimbursed their premiums subject to the limitations set forth in this Division.
- (c) Regardless of which health insurance plan the Health Eligible Retiree selects, the Health Eligible Retiree will be paid or reimbursed for health insurance premiums as follows:
  - (a) For a Health Eligible Retiree who was enrolled in a Preferred Provider Organization (PPO) on January 1, 1997, and who has remained continuously enrolled in that PPO since that time, payment or reimbursement will be up to the cost of the Medicare eligible or Non-Medicare eligible retiree-only premium for the City-sponsored PPO plan available to Health Eligible Retirees.
  - (b) For a Health Eligible Retiree whose primary residence is outside the service area of the City-sponsored Health Maintenance Organization (HMO) plans available to retirees, payment or reimbursement will be up to the cost of the Medicare eligible or Non-Medicare eligible retiree-only premium for the City-sponsored PPO plan available to Health Eligible Retirees.
  - (c) For all other Health Eligible Retirees, payment or reimbursement will be up to the cost of the Medicare eligible or Non-Medicare eligible retiree-only premium for the highest cost HMO plan sponsored by the City.

- (d) For fiscal years 2001 and 2002 only, a Health Eligible Retiree enrolled in the health plan sponsored by the Police Officers' Association (POA) will not be subject to the limits set forth in subparagraph (c) of this section. Instead, payment or reimbursement will be up to the cost of the Medicare eligible or Non-Medicare eligible retiree-only premium for the POA-sponsored plan.
- (e) For fiscal years 2001 and 2002 only, a Health Eligible Retiree enrolled in the health plan sponsored by the Fireman's Relief Association (FRA) will not be subject to the limits set forth in subparagraph (c) of this section. Instead, payment or reimbursement will be up to the cost of the Medicare eligible or Non-Medicare eligible retiree-only premium for the FRA-sponsored plan.
- (f) A Health Eligible Retiree will not be paid or reimbursed any more than the actual premium cost he or she incurs.
- (g) A Health Eligible Retiree timely enrolled in Medicare is also entitled to reimbursement of the cost of the part B supplemental medical expense premium.
- (h) Effective December 31, 1998, the surviving spouse of a City employee Member killed in the line of duty, as described in Section 24.1201 subsection (c), is entitled to post retirement health benefits as a Health Eligible Retiree, in the amount of the annual Flexible Benefits Allotment, for the payment of health premiums only, as defined in the Annual Salary Ordinance adopted by the City Council. The deceased employee's minor dependent children will be covered by the surviving spouse's insurance. If there is no surviving spouse, the minor dependent children will receive health insurance coverage until each reaches the age of 21. The surviving spouse may not use the benefits provided by this section to pay for health insurance for anyone who was not a dependent of the deceased employee.

*(Amended 7-23-2001 by O-18962 N.S.)*

#### **§24.1203 401(h) Fund Established**

- (a) All post retirement health benefit payments pursuant to this Division shall comply with all applicable Federal laws, including Section 401(h) of the Internal Revenue Code ("Code"). To the extent there may be a conflict between the rules of this Division and Section 401(h) of the Code or regulations issued thereunder, the Code and regulations shall govern.

- (b) 401(h) Fund—Compliance with Applicable Provisions of the Code
- (1) All health benefits pursuant to this Division shall be paid solely from the 401(h) Fund established pursuant to Code Section 401(h) and any regulations issued thereunder.
  - (2) No health benefits provided under the 401(h) Fund shall discriminate in favor of highly compensated employees.
  - (3) The 401(h) Fund shall be a separate account solely for providing health benefits and shall be established and maintained by the Board to reflect the amounts contributed for the payment of post retirement health benefits. This account shall be for record keeping purposes only. Amounts credited to the 401(h) Fund may be invested with other Retirement System funds set aside for retirement purposes, without identification of which investments are allocable to each account. However, earnings on each account shall be allocated to each in a reasonable manner.
  - (4) Contributions to the 401(h) Fund shall be made by the City solely to pay and make reimbursement for health benefits for retirees eligible for health benefits. Contributions shall be reasonable, ascertainable, necessary and appropriate. Contributions shall not exceed the amounts that, under the Code, would violate the rule that requires health benefits to be subordinate to the retirement benefits.
  - (5) The City must, at the time it makes a contribution to the 401(h) Fund, designate in writing to the Board that portion of the contribution allocable to the 401(h) Fund to be used solely for health benefits.
  - (6) Prior to the satisfaction of all liabilities under the Retirement System to provide for health benefits, no part of the 401(h) Fund shall be used for, or diverted to, any purpose other than providing health benefits, except that, amounts credited to the 401(h) Fund may be used to pay for necessary and appropriate administrative expenses related to post retirement health benefits.
  - (7) Any amounts contributed to the 401(h) Fund and which remain in the 401(h) Fund after the satisfaction of all liabilities for health benefits (including but not limited to benefits payable in the future for existing members) shall be returned to the City. The City shall provide benefits to affected members and retirees of the Retirement System equivalent to any amount so returned.

- (8) This section does not require separate accounts for key employees because no member of the Retirement System is a key employee under the definitions of the Code.
- (9) Assets attributable to any forfeitures of benefits payable under the 401(h) Fund shall be used to reduce the City's contributions to pay for health benefits provided under the 401(h) Fund.
- (c) The Board may adopt such rules and regulations pursuant to Section 24.0901 as necessary or appropriate to carry out the requirements of this Division.  
(*"401(h) Fund Established" added 3-31-1997 by O-18392 N.S.*)

#### **§24.1204 Funding**

Post retirement health benefits described in this Division shall be paid from the following sources of funds in descending order of availability, as may be appropriate to provide the benefits set forth in this Division:

- (a) from the 401(h) Fund, to the extent of monies therein; and, if necessary,
- (b) by the City, directly, from any source of funds available to The City of San Diego.  
(*"Funding" added 3-31-1997 by O-18392 N.S.*)